

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RODNEY SCOTT KNUTSON

Plaintiff,

VS.

CAPTAIN CATHY DANIEL,
NURSE BESSIE, MEDICAL
DEPARTMENT, BENTON
COUNTY CORRECTIONS
CENTER,

Defendants.

NO. CV-11-5015-JLQ

**ORDER STRIKING APPLICATION TO
PROCEED *IN FORMA PAUPERIS* AND
DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE**

1915(g)

On February 1, 2011, the court granted Plaintiff leave to proceed *in forma pauperis*. (ECF No. 6). Since that time, the court has been notified of Mr. Knutson's release from incarceration (ECF No. 10) and his subsequent re-incarceration (ECF No. 14). Because the reason for asking Plaintiff to provide a revised application to proceed *in forma pauperis* is apparently now moot, **IT IS ORDERED** the District Court Executive shall **STRIKE** that application (ECF No. 16).

Mr. Knutson submitted a First Amended Complaint (ECF No. 9), within one week of the court directing him to amend or voluntarily dismiss. After review of this submission, the court finds it fails to cure the deficiencies of the initial complaint.

Plaintiff's handwriting is illegible at times and his allegations are difficult to decipher. Plaintiff presents no dates or allegations of specific conduct from which the court could infer Defendant "Nurse Bessie" violated his constitutionally protected rights.

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1 To the extent Plaintiff is asserting negligence and medical malpractice, he was
2 previously advised such assertions would not support a cause of action under the Eighth
3 Amendment. *Broughton v. Cutter Lab*, 622 F.2d 458, 460 (9th Cir. 1980).

4 Plaintiff presents no allegations against Defendant Cathy Daniel, the Medical
5 Department or Benton County Corrections Center. *Taylor v. List*, 880 F.2d 1040, 1045
6 (9th Cir. 1989). In any event, a county Corrections Center or one of its Departments are
7 entities of the County and, as such, are not proper Defendants. See *Nolan v. Snohomish*
8 *County*, 59 Wn.App. 876, 883, 802 P.2d 792 (1990)("[I]n a legal action involving a
9 county, the county itself is the only legal entity capable of suing and being sued.").

10 Although granted the opportunity to do so, Plaintiff has failed to amend his
11 complaint to state a claim upon which relief may be granted. For the reasons set forth in
12 the Order to Amend or Voluntarily Dismiss (ECF No. 8), **IT IS ORDERED** the First
13 Amended Complaint shall be **DISMISSED with prejudice** for failure to state a claim
14 upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

15 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings
16 three or more civil actions or appeals which are dismissed as frivolous or for failure to
17 state a claim will be precluded from bringing any other civil action or appeal *in forma*
18 *pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28
19 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory provisions under 28
20 U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three
21 dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file
22 future claims.

23 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
24 Order, enter judgment of dismissal of the First Amended Complaint and the claims
25 therein with prejudice, forward a copy to Plaintiff and close the file. The District Court
26 Executive is further directed to forward a copy of this Order to the Office of the Attorney
27 ORDER STRIKING APPLICATION TO PROCEED *IN FORMA PAUPERIS* AND
28 DISMISSING FIRST AMENDED COMPLAINT WITH PREJUDICE -- 2

1 General of Washington, Criminal Justice Division. The court certifies any appeal of this
2 dismissal would not be taken in good faith.

3 **DATED** this 5th day of April 2011.

4 s/ Justin L. Quackenbush
5 JUSTIN L. QUACKENBUSH
6 SENIOR UNITED STATES DISTRICT JUDGE

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ORDER STRIKING APPLICATION TO PROCEED *IN FORMA PAUPERIS* AND
DISMISSING FIRST AMENDED COMPLAINT WITH PREJUDICE -- 3